

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

MIGUEL C. GOMEZ,

No. C 11-01725 LB

Plaintiff(s),

v.

**ORDER RE: PLAINTIFFS'
VOLUNTARY DISMISSAL OF
ENTIRE ACTION**

WELLS FARGO HOME MORTGAGE,

[Re: ECF No. 55]

Defendant(s).

Miguel C. Gomez and Sonia G. Barajas (collectively, "Plaintiffs") sued Wells Fargo Home Mortgage ("Wells Fargo"), First American Trustee Servicing Solutions, LLC ("First American"), HSBC Bank ("HSBC"), and RMR Financial ("RMR") (collectively, "Defendants") in state court, alleging violations of federal and state law in connection with the issuance of a mortgage loan and the subsequent foreclosure and trustee's sale of their property in Concord, California. Initial Complaint, ECF No. 1 at 24.¹ Defendants Wells Fargo and First American filed motions to dismiss the initial complaint, which were granted. *See* Motion to Dismiss (Wells Fargo), ECF No. 4; Motion to Dismiss (First American), ECF No. 8; Order, ECF No. 39.²

Plaintiffs then filed a first amended complaint, which Wells Fargo and First American moved to dismiss. *See* FAC, ECF No. 46; Motion (Wells Fargo), ECF No. 47; Motion (First American), ECF

¹ Citations are to the Electronic Case File ("ECF") with pin cites to the electronic page number at the top of the document, not the pages at the bottom.

² HSBC and RMR were never properly served with the initial complaint.

1 No. 48. Oral argument on the motions was scheduled for April 5, 2012.

2 On March 28, 2012, Plaintiffs filed a request that asks the court to dismiss their action without
3 prejudice. Request, ECF No. 55.

4 Under Federal Rule of Civil Procedure 41(a), a plaintiff may dismiss an action without a court
5 order by filing a notice of dismissal before the opposing party serves either an answer or a motion
6 for summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(I). Unless the notice states otherwise, the
7 dismissal is without prejudice. Fed. R. Civ. P. 41(a)(1)(B).

8 Here, no Defendants have filed an answer or a motion for summary judgment. Thus, under Rule
9 41(a), Plaintiffs may voluntarily dismiss their case without a court order. The court, therefore, will
10 construe their request for dismissal as a notice of dismissal. Their action is dismissed without
11 prejudice.³ The Clerk of the Court shall close the file.

12 **IT IS SO ORDERED.**

13 Dated: March 29, 2012

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15 LAUREL BEELER
16 United States Magistrate Judge
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27 ³ As the case has been dismissed, all motions (such as Wells Fargo's and First American's
28 motions to dismiss), deadlines (such as ADR-related deadlines), and hearings (such as the April 5,
2012 motion hearing and the May 24, 2012 initial case management conference) are terminated.